

Decision No. 15901.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Investigation
on the Commission's own motion into
the construction by Postal Telegraph-
Cable Company, a corporation of
certain lines and facilities within
this State, and of the opening of
certain offices within this State
for the transaction of intrastate
telegraph business, and into the
transaction of such business there-
at and therefrom.

ORIGINAL

Case No. 2199.

Willard P. Smith and Max Thelen, for Postal Telegraph-
Cable Company, Respondent.

James T. Shaw and N. Korte, for Pacific Telephone and
Telegraph Company.

Beverly L. Hodghead for Western Union Telegraph Company.

Devlin & Brookman, by Douglas Brookman, for California
Independent Telephone Association.

BRUNDIGE, COMMISSIONER:

O P I N I O N

This proceeding was initiated by an order dated
December 3, 1925 instituting an investigation upon this Commission's
own motion into the construction of certain facilities and the
opening of certain offices for the transaction of intrastate tele-
graph business by the Postal Telegraph-Cable Company, a public
utility operating both for the transmission of interstate messages
and for the transmission of intrastate messages within the State of
California. The direct question involved in this investigation is
the jurisdiction of this Commission over the construction of lines
and the opening of offices for the transaction of intrastate tele-
graph business within this State without securing from this Commission

certificates of public convenience and necessity to cover such construction or operation.

A hearing upon this matter was held on December 7, 1925, at which time it appeared that Postal Telegraph-Cable Company had on December 3, 1925, written to this Commission over the signature of Edward Reynolds, its vice-president and general manager, to the effect that this Commission should take notice that said public utility would open offices in the Imperial Valley at Brawley, El Centro and Calexico for intrastate telegraph business on Friday, December 4, 1925. It is admitted that these offices have in fact been opened pursuant to said notice, and it is the position of the Postal Telegraph-Cable Company that no certificate or other authority is requisite from this Commission prior to such action.

The record in this case shows that Postal Telegraph-Cable Company in 1886 entered California with a line along the Southern Pacific Railroad from Oregon, building into San Francisco; that in the following year it extended its lines to Los Angeles, by way of Lathrop, Merced, Fresno and Bakersfield; that in 1890 extensions were constructed to San Bernardino by way of Pasadena and Monrovia; that in 1893 and 1894 pole lines and wires were erected from Mojave eastwardly to Arizona line near a point known as Beal; that in 1901 an extension was built from Los Angeles to San Diego; and that in 1909 lines were constructed from Roseville to a point known as Calvada on the Nevada line. While certain of these lines

were built by predecessor companies, the Postal Telegraph-Cable Company, a California corporation, has owned them for a number of years. Deeds showing these various transfers were filed as exhibits. It was estimated that of the total business done by this company approximately thirty percent is intrastate in character and seventy percent interstate in character.

It also appeared that on July 27, 1917, on which date this Commission was given jurisdiction, under Section 50 (a) of the Public Utilities Act, over the matter of certificates of public convenience and necessity for the construction and operation of telegraph lines within this State, this company had in operation forty offices for the transaction of telegraph business; that offices have been opened subsequent to that date at a number of other points, while certain of the offices then in operation have since been discontinued, one office, that at Chico, having been discontinued for a time and later reopened under authority of this Commission Decision No. 14331, December 4, 1924 (25 C.R.C. 597). Certain offices were discontinued in 1921 in consequence of the expiration of a contract with the Atchison Topeka and Santa Fe Railway Company covering their maintenance, and certain other offices were discontinued in August 1917 in consequence of the cancellation of a similar agreement with the Tonopah and Tidewater Telephone and Telegraph Company. A statement filed by direc-

tion of the Commission on December 18, 1925, discloses that of the forty-five offices now maintained by this company for intrastate telegraph business in California, twelve have been opened for business subsequent to July 27, 1917. These are located at the following points:

Amboy, Brawley, Calexico, Chico, Chowchilla, El Centro, Lodi, Ludlow, Modesto, San Pedro, Turlock and Vacaville.

The record further discloses that on July 27, 1917, this company had in operation 1882 miles of pole lines in this State. The President of the corporation testified that at the present time the company has in operation 1942 miles of pole line, the difference between these two amounts being a net increase of sixty miles of pole line during this period, it appearing, however, that certain lines along the Atchison, Topeka and Santa Fe Railroad right of way were deducted. A detailed statement of both pole miles and wire miles constructed by this company since July 27, 1917, was filed with the Commission on December 21, 1925, pursuant to a direction made at the hearing in this proceeding. The pertinent portion of such statement follows:

<u>E.&A.W. Estimate No.</u>	<u>Work Started</u>	<u>Work Completed</u>	<u>Location</u>	<u>Nature of Work</u>	<u>Pole Miles</u>	<u>Wire Miles</u>
18	1/29/1920	2/20/1920	In Los Angeles	1 copper wire,		2
25	7/14/1920	5/14/1920	In Stockton	3763 feet 50 pr. aerial,		71.25
65	2/15/1922	3/1/1922	Between Laman-da Park & Pasadena	Pole line and 2 copper wires,	4.75	9.50.
80	12/15/1923	9/ 9/1924	Los Angeles to Arizona line at Yuma	Pole line From Redlands and 4 wires from Los Angeles,	200.	1040.
81	3/20/1924	3/10/1925	San Francisco to Oregon Line	2 copper wires,		794.
83	2/ 2/1924	1/15/1925	San Francisco to Los Angeles	4 copper wires,		1936.
5212	2/18/1923	4/20/1924	Sacramento	Underground cable 1518 ft. 10 pr. 450 ft. 15 pr.,		8.34
425-17	6/ 1/1925	8/31/1925	Los Angeles to Calexico	Pole line from Niland 6 wires from Los Angeles,	46.50	1446.
425-19	6/ 1/1925	10/10/1925	Los Angeles to Arizona line at Yuma	1 copper wire,		260.

During the year 1924 Postal Telegraph-Cable Company constructed a line from Redlands through Niland to the Arizona State Line at Yuma, and in 1925 it constructed its line from Niland to and through the Imperial Valley passing through the Cities of Brawley, Imperial, El Centro and Calexico. Company's Exhibit No. 11, filed herein, is a map of Imperial County showing said line in that County in red at all points where it is upon post roads and in blue where it is not upon such roads. Permits for operation of said line through the above named cities were also filed. It appears that a large portion of the line in question in Imperial County is not over post roads of the United States.

It is the position of this company that for two reasons the construction and operation of its new offices here in question do not fall within the provisions of section 50 (a) of the Public Utilities Act; first because its operations are over post roads of the United States under what it claims to be a valid and subsisting franchise from the government of the United States to construct its telegraph lines over the Post Roads of the United States within the State of California, and to operate the same for the receipt and transmission of telegraph messages; and second, that it possesses a state wide franchise from the State of California under Section 536 of the Civil Code, giving to telegraph or telephone corporations authority to construct their lines along and upon public highways within this State. Moreover, under this franchise it is asserted that construction has been going on in such a continuous and uninterrupted manner since July 27, 1917 as to invoke the provisions of Section 50 (b) of the Public Utilities Act to the effect that;

"when the commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege."

The first of these arguments would seem to fall of its own weight by the reason of the admission of this company itself, in the exhibit above mentioned, to the effect that the lines here in question are but in part constructed over post roads of

the United States. It is self evident that the lines which have been constructed over such post roads would be useless to this Company in and of themselves without the connections made by lines not constructed over post roads. In other words, if for the purpose of the instant case, it is assumed that the construction of lines over post roads is permitted by federal act, and does not fall within the regulatory jurisdiction of the state, this is a question which cannot be determined here, since these lines are not wholly over such post roads, and such federal franchises cannot therefore apply.

In reference to the argument under Section 536 of the Civil Code, it is first to be noted that said section provides that telegraph or telephone corporations may construct their lines along and upon public highways and along or across waters or lands of the state, but that said section does not authorize telegraph or telephone corporations to operate said lines, a matter which at this time is primarily vested in this Commission. But even assuming that the function of operation were included in Section 536 C. C., we are not of the opinion that the evidence produced in this matter shows such an uninterrupted prosecution of the work, in good faith, and with reasonable diligence in proportion to the magnitude of the undertaking, under such limited state wide franchise as would eliminate the necessity for this company to obtain from this Commission a certificate of public convenience and necessity before proceeding with construction and operation. Moreover, if this section of the Civil Code does in fact grant to this utility state wide authority to construct its lines throughout

the state, it is doubtful if such authority could be considered to be a "franchise" of the type which was in the legislative mind at the time of the enactment of the above provisions. We are constrained to rule that Section 536 of the Civil Code does not grant authority to this company to operate and do business over any telegraph lines within this State, and that even were a contrary conclusion to be reached, we must find as a fact that the record now before us does not show such continuous and uninterrupted construction under such "franchise", if in fact it be a franchise within the meaning of the Public Utilities Act, to take the construction in question out of the certificating jurisdiction of this Commission.

We must, therefore, for the above reasons require the cessation of operation upon the lines in question unless and until a certificate of public convenience and necessity be authorized for their operation.

O R D E R

The Railroad Commission having upon its own motion instituted an investigation into the construction by Postal Telegraph-Cable Company, a corporation, of certain lines and facilities within this State and of the opening of certain offices within this State for the transaction of intrastate telegraph business and in the transaction of such business thereat and therefrom; a public hearing having been held; evidence having been submitted; the Commission being apprised of the facts, and the matter now being ready for decision,

IT IS HEREBY ORDERED that Postal Telegraph-Cable Company cease and desist from the operation of its line from Niland through Brawley, Imperial and El Centro to Calexico for intrastate telegraph business, unless and until it shall have secured from this Commission a certificate declaring that the present and future public convenience and necessity require or will require such operation.

For all other purposes, the effective date of this Order shall be twenty (20) days from and after the date hereof.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of January, 1926.

H. B. Brundage
C. C. Kearney
George D. Squires
Emmanuel D. Edwards
Leon A. Whitell

Commissioners.